



The information submitted states that X was incorporated under the laws of State on Date 1, and elected to be an S corporation effective Date 1. X's election may have been ineffective on Date 1 because X did not have assets, did not begin doing business, and may not have had shareholders. On Date 2, X issued its first shares of stock to Shareholders, acquired assets, and began doing business. X's S corporation election terminated on Date 3. X requests a ruling that it will be treated as an S corporation from Date 2 to Date 3.

X represents that if X's S election is invalid then the circumstances resulting in such invalidity were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and Shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

### LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1.1362-6(a)(2)(ii)(C) provides, in relevant part, that the taxable year of a new corporation begins on the date that the corporation has shareholders, acquires assets, or begins doing business, whichever is to occur first. The existence of incorporators does not necessarily begin the taxable year of a new corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(d)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation, and (4) the corporation for which the election was made, and each person who was a shareholder in such corporation at any time during the period specified pursuant to 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness, such corporation shall be treated as an S corporation during the period specified by the Secretary.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that if X had no shareholders on Date 1, X's S corporation was ineffective on Date 1 because it did not own any assets and did not begin doing business. However, we

conclude that, if X's S election was ineffective, such ineffectiveness was inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 2 to Date 3, provided that X's election to be an S corporation was not otherwise ineffective and was not otherwise terminated under § 1362(d).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion on whether X is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter  
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cc: